

ADMINISTRATIVE SUBPOENA AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding the use of administrative subpoenas in the investigation of specified criminal offenses.

Highlighted Provisions:

This bill:

- ▶ defines electronic communication, electronic communications services and systems, and remote computing services;
- ▶ provides that the administrative subpoenas are for the investigation of offenses committed with the use of an electronic communications system or service or remote computing service;
- ▶ amends the scope of use of these administrative subpoenas to include stalking and child kidnapping, in addition to sexual offenses against a minor;
- ▶ addresses the rights and remedies of providers and subscribers affected by the administrative subpoena;
- ▶ amends the ground for issuing the administrative subpoena, which currently is when the investigating agency has a reasonable suspicion that an electronic communications system or service or a remote computing service has been used in the commission of a criminal offense, to include when the agency reasonably believes the criminal offense may have been committed; and
- ▶ requires that prosecutorial and law enforcement agencies annually report the number of administrative subpoenas each agency requested of a federal agency during the prior year.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-22-2.5, as enacted by Laws of Utah 2009, Chapter 28

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 77-22-2.5 is amended to read:

77-22-2.5. Administrative subpoenas for criminal investigations for records concerning an electronic communication system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic

58 storage of the communication.

59 ~~[(a)]~~ (d) "Internet service provider" has the same definition as in Section 76-10-1230.

60 ~~[(b)]~~ (e) "Prosecutor" has the same definition as in Section 77-22-2.

61 ~~[(c)]~~ (f) "Sexual offense against a minor" means:

62 (i) sexual exploitation of a minor as defined in Section 76-5a-3 or attempted sexual
63 exploitation of a minor;

64 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
65 of Title 76, Chapter 5, Part 4, Sexual Offenses; or

66 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
67 Section 76-10-1206.

68 (g) "Remote computing service" means the provision to the public of computer storage
69 or processing services by means of an electronic communications system.

70 (2) When a law enforcement agency is investigating a sexual offense against a minor,
71 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
72 Section 76-5-301.1, and has reasonable suspicion that an [Internet protocol address] electronic
73 communications system or service or remote computing service has been used in the
74 commission of ~~[the]~~ a criminal offense, the prosecutor may issue an administrative subpoena,
75 consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the ~~[Internet service]~~ electronic
76 communications system or service or remote computing service provider that owns or controls
77 the Internet protocol address, websites, email address, or service to a specific telephone
78 number, requiring the production of the following information, if available, upon providing in
79 the subpoena the Internet protocol address, email address, telephone number, or other
80 identifier, and the dates and times the address, telephone number, or other identifier was
81 suspected of being used in the commission of the offense:

82 (a) names;

83 (b) addresses;

84 (c) local and long distance telephone connections;

85 (d) records of session times and durations;

86 (e) length of service, including the start date and types of service utilized;

87 (f) telephone or other instrument subscriber numbers or other subscriber identifiers,
88 including any temporarily assigned network address; and

89 (g) means and sources of payment for the service, including any credit card or bank
90 account numbers.

91 (3) A subpoena issued under this section shall state that the [~~Internet service~~]
92 electronic communications system or service or remote computing service provider shall
93 produce any records under [~~Subsection~~] Subsections (2)(a) through (g) that are reasonably
94 relevant to the investigation of the suspected [~~sexual offense against a minor~~] criminal activity
95 or offense as described in the subpoena.

96 (4) (a) An [~~Internet~~] electronic communications system or service or remote computing
97 service provider that provides information in response to a subpoena issued under this section
98 may charge a fee, not to exceed the actual cost, for providing the information.

99 (b) The law enforcement agency conducting the investigation shall pay the fee.

100 (5) The [~~Internet~~] electronic communications system or service or remote computing
101 service provider served with or responding to the subpoena may not disclose the subpoena to
102 the account holder identified pursuant to the subpoena.

103 (6) If the [~~Internet~~] electronic communications system or service or remote computing
104 service provider served with the subpoena does not own or control the Internet protocol
105 address, websites, or email address, or provide service for the telephone number that is the
106 subject of the subpoena, the provider shall:

107 (a) notify the investigating law enforcement agency that it does not have the
108 information; and

109 (b) provide to the investigating law enforcement agency any information the provider
110 [~~may have~~] knows, through reasonable effort, that it has regarding how to locate the Internet
111 service provider that does own or control the Internet protocol address, websites, or email
112 address, or provide service for the telephone number.

113 (7) There is no cause of action against any provider or wire or electronic

114 communication service, or its officers, employees, agents, or other specified persons, for
115 providing information, facilities, or assistance in accordance with the terms of the
116 administrative subpoena issued under this section or statutory authorization.

117 (8) (a) An administrative subpoena issued under this section is subject to the provisions
118 of Title 77, Chapter 23b, Access to Electronic Communications.

119 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
120 Access to Electronic Communications, apply to providers and subscribers subject to an
121 administrative subpoena issued under this section.

122 ~~[(7)-(a)]~~ (9) Every prosecutorial agency [that has issued any subpoenas under this
123 section shall prepare a written report each year on or before June 30 listing] shall annually on
124 or before June 30 report to the Commission on Criminal and Juvenile Justice the number of
125 administrative subpoenas issued by the agency during the previous calendar year.

126 ~~[(b) The report shall be submitted to the Utah Commission on Criminal and Juvenile~~
127 ~~Justice on or before August 31 of the same year.]~~

128 (10) State and local prosecutorial and law enforcement agencies shall annually on or
129 before June 30 report to the Commission on Criminal and Juvenile Justice the number of
130 administrative subpoenas the agency requested that any federal law enforcement agency issue
131 during the prior calendar year.